83673-6

NO. 37718-7-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

QUALCOMM INCORPORATED,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

PETITION FOR REVIEW

Michele Radosevich
Davis Wright Tremaine LLP
Attorneys for Qualcomm, Incorporated

1201 Third Avenue, Suite 2200
Seattle, Washington 98101
(206) 757-8124 Phone
(206) 757-7124 Fax

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. IDENTITY OF PETITIONER

Appellant QUALCOMM Incorporated ("Qualcomm") requests review by the Supreme Court.

II. DECISION BELOW

On August 25, 2009, Division Two of the Court of Appeals filed a published decision in this case, ___ Wn. App. ___, 213 P.3d 948 (2009), affirming the trial court's order granting summary judgment to the Department of Revenue ("Department") and denying summary judgment to Qualcomm. The decision is attached hereto as Appendix A.

III. INTRODUCTION

This Court should exercise its discretion in granting review because of the substantial public interest in a tax compliance system that is fundamentally fair and consistently applied. The lower court misapplied the appropriate legal test and issued an inconsistent opinion which would unfairly prejudice numerous businesses which process and transmit data. A taxing authority cannot isolate one element of a service for the purpose of applying a higher tax rate to maximize the tax owed.

Qualcomm provides a service, "OmniTRACS," that allows commercial trucking companies to track and determine the status of their vehicles. Accordingly, Qualcomm paid business and occupation tax ("B&O") to the State of Washington as an information services business.

The Department issued an additional assessment, however, claiming that OmniTRACS is a not an information service but a "telecommunication service"[1] and thus Qualcomm should have collected retail sales tax from its customers. The latter classification not only obligates the service provider to collect sales tax, but also may subject the provider to local utility taxes. The tax rate differential is substantial—up to approximately 8.5 percent on the sales tax and 5.5 percent on the utility tax.[2]

Many information services are provided using telephone lines or other transmission mediums. To prevent these services from being classified as telecommunications for purposes of the retail sales tax, the Legislature expressly excluded from the definition of "telecommunications service" "[d]ata processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser ***where such purchaser's primary purpose for the underlying transaction is the processed data or information. . . .***" RCW 82.04.065(8).

---

[1] Former RCW 82.04.065, in effect during the audit period, imposed the tax on "network telephone service." 2008 SB 5089 amended the statute, referring to the same service as "telecommunications service." The parties agree that the change does not alter the scope of the statute.

[2] For example, Seattle's sales tax rate is 9.5 percent, which is offset by a 1 percent difference in B&O rates; Seattle's utility tax rate is 6 percent versus a .415 percent B&O rate for information services. Only the intrastate services would be subject to the local utility tax.

The Court of Appeals recognized that Qualcomm's service combined transmission and information, and the court applied the "primary purpose" test set forth in the statute. The application of the test is a question of first impression, and rather than properly evaluating the OmniTRACS system in its entirety, the court erred by separating the transmission and processing components of the OmniTRACS system—which by themselves have no usable function to the end user—and analyzing them in isolation for taxation purposes. Not surprisingly, after isolating the transmission part of the system, the court concluded that its primary purpose was transmission.

The Court of Appeals divide-and-conquer approach to the primary purpose test was erroneous and requires review for three reasons. First, the Court of Appeals' analysis conflicts with the analysis in *Community Telecable of Seattle, Inc. v. City of Seattle*, 164 Wn.2d 35, 186 P.3d 1032 (2008) in isolating transmission when it is a necessary and integral part of a larger service. Second, the court's application of the primary purpose test diverges from the application of the primary purpose test in other states, resulting in a real danger that Washington will be out of compliance with the Streamlined Sales Tax Agreement, and (3) will, unless corrected, unfairly and vastly expand DOR's authority to impose telecommunications taxes.

IV. ISSUE PRESENTED FOR REVIEW

Whether the Court of Appeals erred by applying the primary purpose test to individual service components that cannot function on their own and not to the product as a whole?

V. STATEMENT OF THE CASE

Statement of Facts

Qualcomm offers the OmniTRACS service to Washington customers, typically trucking companies, who contract for this service to enable their fleet management centers or dispatchers to track and manage their vehicles more efficiently. CP 29, ¶ 2. The OmniTRACS system involves hardware, software, data processing, and transmission. CP 241-42. Qualcomm's website describes some of its uses:

> The OmniTRACS system goes beyond merely promoting efficiency and provides the tools needed for a proactive approach to fleet and service/delivery vehicle management. Fleet data, for example, can help enable customers to identify routes that yield a greater revenue stream. . . . The OmniTRACS system also helps increase the security and safety of vehicles and their operators. Tamper-alert systems, panic alarms, and satellite-tracking capabilities help minimize the risk of loss due to tampering and theft, and help facilitate quick recovery by providing timely location information for law-enforcement agencies. . . . It helps fleet managers identify drivers that make unplanned stops, accrue excessive idle time, or accumulate out-of-route mileage as well as providing detailed information on fuel consumption.

CP 104-05. The hardware and software necessary to perform these functions are separately priced and the sales tax on those items has been collected and paid. CP 94, 184. At issue is the tracking service, which is purchased with the other components and which, at the basic level, generates data about the vehicle's location and status. It can also be used for text messaging and to generate additional data from optional additional monitoring systems.

The basic OmniTRACS service allows customers to track the location of all vehicles in its fleet to determine the delivery status of shipments. CP 29, ¶ 2, CP 185. In addition, a customer fleet management center can use the vehicle location and status information to compute out-of-route miles and estimated time of arrival to improve utilization planning. CP 29, ¶ 2. The customer can also choose to make the information available to its shippers, allowing them to track the delivery status of their shipments. *Id.*

A mobile communications terminal ("mobile unit") in each vehicle sends a signal via satellite to Qualcomm's Network Management Center ("NMC") in California, where Qualcomm computers calculate the vehicle position and reprocess it into a data packet that is available to the customer. CP 30, ¶ 3, CP 242-43. The customer accesses the information

via Internet or landline, neither of which is part of the OmniTRACS system, but is obtained directly by the customer from its own Internet or telecommunications provider. *Id.*, CP 112.

To relay data to and from the truck and the NMC, Qualcomm leases transponder space on two separate satellites, one of which is dedicated to sending and receiving data and one of which provides the data from which Qualcomm's computers can calculate the location of the vehicle by triangulation. *Id.*, CP 30, ¶ 3. In addition to calculating a vehicle's latitude and longitude, the OmniTRACS system generates a unique identification number for each vehicle and a date/time stamp. *Id.*

The OmniTRACS system is proprietary; it predates and differs from GPS.[3] CP 112, 242. In Qualcomm's proprietary system, the truck transmits only its identity, not its position. CP 112. The position is calculated at the NMC and time-stamped. *Id.*, CP 30, ¶ 3. The position location information resides on the NMC computers until it is accessed by the customer. The OmniTRACS service thus does not provide transmissions or communications to the customer.

Basic OmniTRACS service includes hourly calculations of the position of the truck. CP 30, ¶ 4, CP 185. Customers may purchase extra services beyond the basic level. *Id.* The enhanced OmniTRACS service

[3] The OmniTRACS system is capable of using GPS to calculate the position location onboard, but fewer than 10 percent of customers choose this option. CP 112.

includes not only hourly tracking but also fill-in-the-blank messaging capability. CP 30,¶ 5, CP 185. In addition, other monitoring products are available. *See, e.g.,* CP 198-99.[4] For instance, SensorTRACS includes sensors to monitor such things as fuel use and driving performance, e.g. mpg, speed, idle time, etc. CP 198, 298-99. The OmniTRACS service then processes the data to generate useful information for the customer via "messages" that reside on the NMC computers similar to the hourly position report messages, e.g. average mpg, top speed. *See* CP 196 ("All OmniTRACS messages which occur in the use of the SensorTRACS System . . . constitute regular messages under the OmniTRACS Service and will be invoiced in accordance with the message services. . . ."). Thus, OmniTRACS offers customers a range of management tools that are integrated and work with one another. CP 82-83, 94-96. These additional tools, which may have different names, interface through the OmniTRACS service, which ***collects and processes*** the information.

Statement of Procedure

Qualcomm filed its refund action on July 27, 2007. CP 4-17. Following discovery, the parties filed cross motions for summary judgment, which were heard on May 2, 2008. The court granted the Department's motion for summary judgment and denied Qualcomm's

[4] The Court of Appeals based its decision only on the basic tracking service. For a description of the enhanced services, see Appellant's Opening Brief at 5-7.

motion. CP 303-05. The appeal was filed on May 13, 2008. CP 306. The Court of Appeals filed a decision on August 25, 2009, affirming the trial court's grant of summary judgment to the Department. *See Qualcomm Incorporated v. Department of Revenue,* ___ Wn.2d ___, 213 P.2d 948 (2009) [Appendix A].

VI. ARGUMENT

This case presents an issue of substantial public interest. *See* RAP 13.4(b)(4). The electronic age has given rise to a large number of business services that process data and transmit the resulting information across large distances. The reservation systems used by travel agents, security monitoring services, medical insurance claims services used by health care providers, and virtually any other computerized service provided over dedicated telephone lines are just a few examples. If these services are viewed as telecommunications, they are considered retail sales under Washington law, subject to state and local sales tax, and the gross revenues from the services are subject to state B&O tax and local utility tax. If on the other hand, they retain their current status as information services, their sales are not subject to sales tax, and their revenues are subject to state and local B&O taxes.[5]

[5] As of July 26, 2009, some of these services may be subject to sales tax as "digital automated services" under 2009 HB 2075, which taxes digital goods and services.

Tax law distinguishes between telecommunications and information services by applying the "primary purpose test"—whether the "purchaser's primary purpose for the underlying transaction is the processed data or information" or whether the purchaser is simply buying the transmission.[6] In applying this test, the Department of Revenue urged the court to consider only transmission and processing *component* of the OmniTRACS system rather than the system as a whole:

> [I]t is important to distinguish between the functionality of the OmniTRACS Mobile Communications System from the functionality of the OmniTRACS service. The key distinction between [them] is that the OmniTRACS Mobile Communications System includes hardware and software located on the trucks and the customer's dispatch center that creates and processes almost all the information. The OmniTRACS service is the transmission component of the OmniTRACS Mobile Communications System that primarily transmits the information between the OmniTRACS hardware on the trucks and the OmniTRACS software at the customer's dispatch center.

Respondent's Brief at 23-24 (citations omitted). The Court of Appeals agreed. *Qualcomm*, 213 P.3d at 953, 955. Having adopted this

---

However, the services would not become "network telephone service," which may be a utility for local tax purposes.

[6] During the audit period, the primary purpose test was articulated in Department determinations:

> As in the present case, the line is not always clear as to whether a transaction is a sale or a service. The examination must focus upon the *real object* of the transaction sought by the taxpayer's customers and not just its component parts.

Det. No. 90-128, 9 WTD 280-1 (1990) (italics added). In 2007, the test was placed in statute. *See* 2007 SB 5089, RCW 82.04.065(8).[6]

distinction, not surprisingly, the court found that the primary purpose of the single component was transmission.

If left standing, this application of the primary purpose test would run roughshod over the legislature's deliberate exclusion of information services from the definition of "telecommunications service." Specifically, this Court should grant review because the Court of Appeals' decision (1) ignores this Court's analysis in *Community Telecable*, (2) conflicts with the application of the primary purpose test in other jurisdictions, and (3) unfairly narrows the focus of the analysis and thus predetermines the result—that is, the primary purpose of the transmission component is transmission. Moreover, in isolating transmission in this case for taxation as "network telephone service" or "telecommunications," it isolates a component of the service that occurs outside Washington in most cases, and thus, viewed alone, would not be subject to taxation here.[7]

A. The Court of Appeals' Analysis Conflicts with the Analysis of This Court in Community Telecable.

In *Community Telecable of Seattle, Inc. v. City of Seattle*, 164 Wn.2d 35, 186 P.3d 1032 (2008), this Court laid down the proper analysis of a service that utilizes a telecommunications link as an integral part of a

[7] Transmissions to and from the mobile unit occur at Qualcomm's NMC in California. where the satellite links are processed. However, Qualcomm does not take the position that any component of its service to Washington customers is exempt from Washington tax because Qualcomm has always viewed its system as a whole.

different kind of service. The Court emphatically turned back Seattle's efforts to isolate the data transport element of internet service and subject it to local utility tax. This time, the taxing authority is the State but the effort is the same—to separate the telecommunications component of a service and label it "network telephone service" in order to apply higher tax rates. This Court stated:

> The transmission component of Internet service cannot be separated from the actual service. Moreover, the record reflects that Comcast "transforms" and "manipulates" data as it passes through the Comcast network; this manipulation is an integral and necessary part of the provision of Internet services. Even where Comcast passes on data to another entity, such as At Home Corporation, that passed data would not be useful unless Comcast had transformed the data along the way. Therefore, Comcast is not engaging in the mere "provision of transmission" under RCW 82.04.065(2). Comcast's cable Internet service is plainly excluded from the statutory definition of "network telephone service" under RCW 82.04.065(2).

Id. at 44 (citations omitted). Each of these statements is equally as true of Qualcomm and its OmniTRACS service as it was of Comcast and its Internet access. In both cases, data transport took place, but the transportation of data was an integral part of providing another service—Internet access or truck location and status. And in both cases, data was manipulated as well as transported. In *Community Telecable*, the data was put in packets and changed in format so that it could be read at the other end. Here, in the case of location information, Qualcomm's computers

make actual calculations as to the latitude and longitude of the truck and then reformat with a time stamp (e.g., 5 miles southeast of Salt Lake City, UT; 4:30 MT). The Court of Appeals failed to grasp the similarities between this case and *Community Telecable* and therefore ignored the decisional principles of the case.

Community Telecable also endorsed the principle that state categorization of telecommunications should match that of the Federal Communications Commission charged with regulation of this business. 164 Wn. 2d at 44-45. *See also Qwest Corp. v. City of Bellevue,* 161 Wn.2d 353, 166 P.3d 667 (2007) (federal law determines whether telecommunications are interstate or intrastate for state tax purposes). Congress also has made this point: "For more than 30 years, the FCC has been analyzing the nature of the convergence of communications and computer services. . . . For States now to start classifying computer-based services as 'telecommunications services' only creates confusion for the industry." H.R. Rep. No. 105-570, pt. 1, at 10 (1998).

Permitting the Department of Revenue to categorize Qualcomm's computer-based information service as "network telephone service" or "telecommunications" when the transmission component falls entirely outside those categories under federal law will cause exactly this kind of confusion.

B. The Court of Appeals Ignored the Application of the Primary Purpose Test in Other Jurisdictions.

While the application of the primary purpose test is an issue of first impression in Washington, the Court of Appeals was not writing on a blank slate. Tennessee had recently applied the primary purpose test in *Qualcomm, Inc. v. Chumley*, 2007WL 2827513 at *8 (Tenn. App. Sept. 26, 2007), involving the same service and a nearly identical statute. The Tennessee Court had looked at the OmniTRACS system as a whole and concluded that its primary purpose was to locate trucks. *Id.* Division Two distinguished the case because it "improperly conflates the functionality of the OmniTRACS system with the function of the OmniTRACS Mobile Communications service." 213 P.3d at 953. Having noted the difference in how the primary purpose test had been applied, the Washington Court of Appeals made no effort to analyze which was the proper application. Ironically, its effort to make a distinction concedes that the primary purpose test would produce a different result if the entire OmniTRACS system is considered. *Id.*

The uniform application of this test across state boundaries is necessary if the Streamlined Sales Tax Project is to be successful. In 2007, the Legislature passed the Streamlined Sales Tax bill, part of a nationwide effort to simplify sales tax administration and reduce the

burden of tax compliance. *See* 2007 HB 5089, Wash. Laws, Ch.6. This nationwide effort has as a specific objective "uniformity of major tax base definitions." *See* Streamlined Sales Tax Project, Appendix B.

The Washington legislation addresses the situation in which taxable goods or services are combined with non-taxable services for a single, non-itemized price by using the primary purpose test. RCW 82.08.190 and RCW 82.08.195. The State and Local Advisory Council, which produced the model legislation, explained the application of the test in an issue paper.

> [F]actors that might be considered include: what the seller is in the business of doing; whether the tangible good or service that is essential to a service is available for sale without the service or available exclusively in connection with providing the service; how the tangible good or service is essential to the use of a service; and what the purchaser's object of the transaction is.

State and Local Advisory Council Issue Paper at 7, Appendix C. These factors require consideration of the ***relationship*** between the exempt and taxable components of the transaction. If the Department is allowed to separately analyze the purpose of each component of the purchased system, it will distort the test and defeat the Legislature's intention to create uniform rules in a coordinated nationwide system.

C. Under the Primary Purpose Test Articulated by the Court of Appeals, the Primary Purpose Will Always be Transmission.

The Court of Appeals decision in this case was the first appellate decision to apply this test in Washington[8] and it did so in a way that will allow the categorization of nearly any service that contains a transmission component—a growing segment of business activity—as a telecommunications service and thereby subject it to sales tax and local utility tax.

The Court of Appeals made a fundamental error by considering the primary purpose of the transmission and processing component in isolation from the rest of the OmniTRACS system.[9] The transmission and processing components of the OmniTRACS system are not usable by themselves. For the OmniTRACS system to have value to the end user as a product, all of its components—hardware, software, data processing, and transmission—must be in place. Qualcomm sells a piece of hardware to the customer that generates and transmits raw data from the truck to Qualcomm. Qualcomm processes that raw data into geographic coordinates and truck conditions and stores it on its own computers located outside Washington where it is accessed by the trucking company

[8] The only cases cited by the Court of Appeals are administrative determinations from the Department, which reached an opposite result. 213 P.3d at 954-55.
[9] The court also fundamentally erred in its factual application of this test. Qualcomm reserves the right to raise this issue if the petition is granted.

using an Internet or telephone service provider, not Qualcomm. Qualcomm's software installed on the customer's computer then interfaces with the customer's other computerized applications, allowing automation of processes such as billing for shipments delivered. Rather than looking at the entire OmniTRACS system, the Court of Appeals reasoned that the customer had already purchased the hardware and the software, so only the transmission and processing by Qualcomm were at issue:

> Here the record shows that the tracking service provides a communications link between the truck and its mobile communications terminal, owned by the customer, and the dispatch center's computers and tracking software, also owned by the customer.

213 P.3d at 955. The decision ignores the fact that the customer purchased both ends of the link from Qualcomm ***in connection*** with purchasing the service that transmits and processes the data and that no part of the system is capable of functioning without the other parts. Instead it incorrectly concludes that all of the data "is created by the customer's shipping activity."[10] The data would be unintelligible, however, without the calculations performed by Qualcomm.

[10] In trying to isolate the various elements of the service, the court's analysis is internally inconsistent and confusing. The court concludes that the customer's primary purpose was "the position poll reports, not the data manipulation required to create the reports." 213 P.3d at 955. If the customer's purpose was the position polls, however, it would be an information service.

If a customer purchases an entire integrated system together, logic requires that analysis of the customer's purpose involve the integrated system. As an example, a purchaser of stereo components normally buys a tuner/amplifier, as well as a CD player, perhaps a tape player, and speakers. The purpose of the whole system is to play music and that is also the purpose of each component. Analyzing why a customer bought a tuner/amplifier in isolation would be silly—the system simply would not work without it.

Under the Court of Appeals' analysis, ***any*** information service that combines software with processing and transmission could be considered telecommunications because, under longstanding Department interpretation, software is tangible personal property and its sale triggers sales tax. Thus, software is normally separately priced to facilitate sales tax collection. If, as a result of separate pricing, however, the Department is entitled to consider the transmission/processing component alone in applying the primary purpose test, then transmission is going to be the primary purpose every time. Moreover, this interpretation creates the absurd position that while the primary purpose of the entire system is the generation of information and therefore not subject to sales tax, the separate components are each subject to sales tax. Severing the software

(so sales tax can be charged) should not make the transmission taxable when it would not otherwise be.

The Department's insistence on separate analysis is particularly inappropriate when the transmission component of Qualcomm's service does not take place in Washington the vast majority of the time. Unless both the customer and the truck are inside the state's borders, the transmissions in question are strictly between the truck and the NMC located in California. After processing the information, Qualcomm simply stores it for later access by the customer using the customer's own Internet or telecommunications provider. Of course, the information is retrieved and used in Washington, but only by using the software that the Department asserts should not be considered in applying the primary purpose test.

VII. CONCLUSION

For the above-stated reasons, this Court should reverse the Court of Appeals and grant summary judgment to Qualcomm or, alternatively, remand to the Superior Court for trial.

RESPECTFULLY SUBMITTED this 24th day of September, 2009.

Davis Wright Tremaine LLP
Attorneys for Qualcomm

By Michele Radosevich

Michele Radosevich
WSBA #24282
1201 Third Avenue, Suite 2200
Seattle, WA 98101
Telephone: (206) 757-8124
Fax: (206) 757-7124
E-mail:
micheleradosevich@dwt.com

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On this date I caused to be served in the manner noted below a copy of the foregoing **Petition for Review** on the following counsel of record:

Brett Durbin
Assistant Attorney General
Revenue Division
7141 Cleanwater Drive SW
PO Box 40123
Olympia, WA 98504-0123

BY:

	U.S. MAIL
X	HAND DELIVERED – Washington Legal Messengers
	OVERNIGHT MAIL
	FACSIMILE
	ELECTRONIC MAIL

DATED this 24th day of September, 2009.

Elaine R. Huckabee

APPENDIX A

213 P.3d 948
(Cite as: 213 P.3d 948)

Court of Appeals of Washington,
Division 2.
QUALCOMM, INCORPORATED, Appellant,
v.
STATE of Washington, DEPARTMENT OF REVENUE, Respondent.
No. 37718-7-II.

Aug. 25, 2009.

Background: Taxpayer brought action against Department of Revenue, seeking a refund of retail sales taxes it paid for sales of its truck tracking system. The Thurston Superior Court, H. Christopher Wickham, J., entered summary judgment in favor of Department, and taxpayer appealed.

Holding: The Court of Appeals, Houghton, P.J., held that system was a network telephone device subject to retail sales tax.
Affirmed.

West Headnotes

Taxation 371 ⇐3672

371 Taxation
371IX Sales, Use, Service, and Gross Receipts Taxes
371IX(E) Rate and Amount of Tax
371k3672 k. In General. Most Cited Cases
Truck tracking system sold by taxpayer was a network telephone device, subject to retail sales tax, rather than subject to taxation at the business and occupations tax service rate, since primary purpose of system was data transmission, rather than data processing; although taxpayer processed transmissions from the system at its network management center, the purpose of the system was to allow taxpayer's customers to locate and convey information to and from trucks, which data was created by customers, not taxpayer. West's RCWA 82.04.065.

***948** Michele G. Radosevich, Garry George Fujita, Davis Wright Tremaine LLP, Seattle, WA, for Appellant.

***949** Brett S. Durbin, Cameron Gordon Comfort, Atty. General's Office, Revenue Division, Olympia, WA, for Respondent.

HOUGHTON, P.J.

¶ 1 Qualcomm, Incorporated, appeals the trial court's summary judgment order dismissing its tax refund claim. It argues that the Department of Revenue (DOR) improperly taxes its truck tracking service as a "network telephone service" rather than at the business and occupations (B & O) tax service rate. We disagree and affirm.

FACTS

¶ 2 Qualcomm sells the OmniTRACS Mobile Communications System (OmniTRACS system or system) to trucking companies to assist them with tracking and managing vehicles. To use Qualcomm's OmniTRACS system, a customer needs three components: (1) mobile communication terminals in its trucks and other truck hardware; (2) system software, installed at the trucking dispatch center; and (3) the OmniTRACS service (tracking service), which allows the customer's dispatch center to locate and communicate with individual trucks.

¶ 3 The customer purchases from Qualcomm the hardware, such as sensors and mobile communication terminals, and the software and licenses to use the software, such as the programs used in a trucking company's dispatch center. The taxation of these items is not the subject of this appeal.

¶ 4 A customer may purchase one of two system tracking service plans. The Base Plan costs $35 per month. This plan includes one automatic position poll per hour, which informs trucking company's dispatch centers of the truck's location. It creates an

automatic position poll when the truck's mobile communication terminal sends a signal via two satellites to Qualcomm's network management center.

¶ 5 Qualcomm's network management center converts the raw information sent by the truck's mobile communication terminals to Qualcomm's satellites into location, time, and date information, readable by the system software at the customer's dispatch center. Qualcomm's system can also use a global positioning system (GPS) to calculate a truck's location, but fewer than 10 percent of "all units on air" use GPS. Clerk's Papers (CP) at 112.

¶ 6 The position poll data resides in Qualcomm's network management center computers. To receive automatic position polls, the customer must log into Qualcomm's network management center. The customer must do so via landline or Internet from its own computer in its own dispatch center.

¶ 7 Qualcomm's Enhanced Plan costs $50 per month and includes the Base Plan plus 180 messages and 18,000 characters per month. The Enhanced Plan groups messages into three categories: macro messages, freeform messages, and SensorTRACS.

¶ 8 Macro messages comprise the bulk of messages sent. These messages consist of a template stored at both the customer's dispatch center and in a customer's mobile communication terminal in the customer's truck. The customer determines the information contained in its template.

¶ 9 To send a macro message to a truck, the customer's dispatch center uses a "fill in the blank" template and transmits the information to a truck's mobile communication terminal via Qualcomm's network management center. CP at 30. Information from the truck can also be filled in on the template to transmit information to the customer's dispatch center via Qualcomm's network management center. A customer can integrate the macro data into its own computer system to create, for example, invoices for delivered goods.

¶ 10 Either the customer's truck driver or the customer's dispatch center employee drafts freeform messages, like the macro messages, transmissible via Qualcomm's network management center. These messages most resemble email messages, but like all other data, Qualcomm's network management center stores the customer's messages accessible by the customer's dispatch center. For example, Qualcomm's system assigns a tracking number to messages sent from a customer's truck. The customer's dispatch ***950** center then references this number to access the truck's freeform message.

¶ 11 The customer's dispatch center sends an automatic confirmation to Qualcomm's network management center. Freeform messages include additional data that Qualcomm's network management center can use to calculate the position of a truck's mobile communication terminal sending the message and "provide information on the signal strength of the satellite communications link between the mobile unit and the satellite." Appellant's Br. at 7.

¶ 12 The SensorTRACS messages consist of information collected by a customer's mobile communication terminal from sensors on a truck and transmitted via Qualcomm's network management center to the customer's dispatch center. The Qualcomm software at the customer's dispatch center receives the information from Qualcomm's network management center and allows a customer to use the raw information to monitor truck driver performance, engine information, and location.

¶ 13 Between 1998 and 2001, the period at issue here, Qualcomm paid B & O taxes at a lower service rate. After an audit, DOR assessed Qualcomm $900,573 for uncollected retail sales tax, retailing B & O tax, and interest, based on its assumption that the tracking portion of Qualcomm's system is a "network telephone service," as defined by former RCW 82.04.065(2) (2002) (amended in 2002, 2007, 2009).

¶ 14 Qualcomm appealed to DOR's appeals division, which rejected the appeal and sustained the tax. Qualcomm paid the taxes and filed a superior court action seeking a refund. RCW 82.32.180. On cross motions for summary judgment, the trial court granted DOR's motion and denied Qualcomm's. Qualcomm appeals.

ANALYSIS

¶ 15 Qualcomm first contends that the trial court erred in granting summary judgment to DOR. It argues that DOR incorrectly determined that Qualcomm's tracking service is taxable as a "network telephone service" as defined in former RCW 82.04.065.

Standard of Review

¶ 16 We review summary judgment orders de novo. *Qwest Corp. v. City of Bellevue,* 161 Wash.2d 353, 358, 166 P.3d 667 (2007). A trial court properly grants a motion for summary judgment when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c).

¶ 17 We resolve this matter by interpreting the statute DOR used to tax the OmniTRACS system. We review the meaning of a statute de novo as a question of law. *Delyria v. State,* 165 Wash.2d 559, 562, 199 P.3d 980 (2009). We must ascertain and carry out the legislature's intent. *Delyria,* 165 Wash.2d at 563, 199 P.3d 980. Where plain on its face, we give effect to a statute's language as an expression of legislative intent. *Delyria,* 165 Wash.2d at 563, 199 P.3d 980. We determine the plain meaning of a statutory provision based on the statutory language but, where necessary, we may look to the context of related statutes that disclose legislative intent. *Delyria,* 165 Wash.2d at 563, 199 P.3d 980. Where the statutory language is clear, we end our inquiry. *Delyria,* 165 Wash.2d at 563, 199 P.3d 980. If after this inquiry the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous and we may resort to statutory construction aids, including legislative history. *Delyria,* 165 Wash.2d at 563, 199 P.3d 980. We construe taxation statute ambiguities against the state and in favor of the taxpayer. *Qwest,* 161 Wash.2d at 364, 166 P.3d 667.

¶ 18 According to DOR, Qualcomm provided "network telephone service" as defined by former RCW 82.04.065, requiring it to be taxed at that rate. The relevant portion of this statute provides:

> "Network telephone service" means the providing by any person of access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, *or the providing of* telephonic, video, *data, or similar communication or transmission for hire, via* a local telephone network, toll line or channel,***951** cable, *microwave,*[FN1] or similar communication or transmission system.
>
> FN1. Satellites use microwave technology.

Former RCW 82.04.065(2) (emphases added).

¶ 19 In 2007, the legislature amended RCW 82.04.065 to replace the phrase "network telephone service" with "telecommunications service." Laws of 2007, ch. 6, § 1002(8). The legislature enacted the changes to update terminology, not to change current taxability law. S.B. Rep. 5089, at 3 (Final Bill Report, effective July 22, 2007).

¶ 20 In the new law, "telecommunications service" expressly excludes

> [d]ata processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser *where such purchaser's primary purpose for the underlying transaction is the processed data or information.*

Laws of 2007, ch. 6, § 1002(8)(a) (emphasis added) (codified as RCW 82.04.065(8)(a)).[FN2]

FN2. Although not expressly stated, the parties agree that the distinction between data transmission and data and information processing preexisted the 2007 amend- ment.

¶ 21 The parties dispute the proper method of analysis. We must first decide the correct method for analyzing the statutory language.

Plain Language and Proper Method of Analysis

¶ 22 Qualcomm contends that the plain language of the "network telephone service" definition covers only "pure transmission-transporting voice and data messages from one point to another-not on generating or processing the content of those messages." Appellant's Br. at 12. Hence, it argues that because its system involves data processing, DOR cannot tax the system as a telephone service even if it also transmits the processed data.

¶ 23 Qualcomm cites two cases to support its argument, but neither applies here. In *Western Telepage, Inc. v. City of Tacoma,* 140 Wash.2d 599, 998 P.2d 884 (2000), our Supreme Court addressed taxation of a pager service. Qualcomm argues that *Western Telepage* determined that former RCW 82.04.065 unambiguously includes "data transmitted by microwave" but not data processing. 140 Wash.2d at 612, 998 P.2d 884. *Western Telepage* confirms that this statute covers data transmission. 140 Wash.2d at 612, 998 P.2d 884. But it does not address a situation like Qualcomm's, which involves both data transmission and processing.

¶ 24 Qualcomm also relies on *Community Telecable of Seattle, Inc. v. City of Seattle,* 164 Wash.2d 35, 186 P.3d 1032 (2008). Qualcomm asserts that this case shows that any data manipulation removes a service from the definition of a "network telephone service." Resp't's Br. at 14. DOR counters that *Community Telecable* is irrelevant because it addresses Internet service, which is expressly excluded from the definition of "network telephone service." Resp't's Br. at 16.

¶ 25 In *Community Telecable,* the city sought to tax Comcast under former RCW 82.04.065 because a portion of its activities included data transmission. 164 Wash.2d at 42, 186 P.3d 1032. The court rejected this argument, noting that "[t]he transmission component of Internet service cannot be separated from the actual service." *Community Telecable,* 164 Wash.2d at 44, 186 P.3d 1032.

¶ 26 Had the *Community Telecable* analysis stopped here, DOR's argument that the case limits its analysis to Internet services would have merit. The court, however, continued:

> *Moreover, the record reflects that Comcast "transforms" and "manipulates" data as it passes through the Comcast network; this manipulation is an integral and necessary part of the provision of Internet services.* Even where Comcast passes on data to another entity, such as At Home Corporation, that passed data would not be useful unless Comcast had transformed the data along the way. *Therefore, Comcast is not engaging in the mere "provision of transmission" under RCW 82.04.065(2).* Comcast's cable Internet service is plainly ***952** excluded from the statutory definition of "network telephone service" under RCW 82.04.065(2).

164 Wash.2d at 44, 186 P.3d 1032 (emphases added) (citations omitted).

¶ 27 *Community Telecable* clearly indicates that where transmission is required to provide an excluded service, such as Internet service or data or information processing, the data "transmission component ... cannot be taxed separately" from data processing services. 164 Wash.2d at 45, 186 P.3d 1032. Although the case mentions the "mere 'provision of transmission' under RCW 82.04.065(2)," it also concludes that the manipulation of data must be "an integral and necessary part of" the excluded service. *Community Telecable,* 164 Wash.2d at 44, 186 P.3d 1032. Consequently,

Community Telecable also does not support Qualcomm's position that any data transformation automatically removes a service from the definition of "network telephone service."

¶ 28 More notably, the "integral and necessary" language of *Community Telecable* favors DOR's analysis: determining the "primary purpose" or "true object" of the hybrid activity. The 2007 amendment of RCW 82.04.065(8)(a) also supports this test by referencing the purchaser's "primary purpose for the underlying transaction." Former RCW 82.04.065 (2007).[FN3]

> FN3. Qualcomm also relies on WAC 458-20-155, which provides that "[p]ersons who charge for providing information services or computer services" are subject to the service B & O tax, and that "this includes charges for ... on-line information and data." This regulation does not preclude applying a primary purpose or true object test to determine whether the "charges for ... online information and data" form the primary purpose of the taxable income stream. *See generally* Det. No. 90-128, 9 WTD 280-1, at 4-5 (1990) (applying WAC 458-20-155 but also examining whether transmission function was "incidental" to processing service).

¶ 29 Before reaching the "primary purpose" test, we must first address DOR's initial position that Qualcomm's tracking service (either the Base Plan or the Enhanced Plan) involves data transmission *only* and is taxable under former RCW 82.04.065. That is, DOR argues that the Qualcomm's system's *sole* purpose is data transmission. We disagree.

¶ 30 DOR cites *Western Telepage* for the proposition that data transmission can include (1) one-way transmission of data (as opposed to two-way communication, such as a telephone call); (2) data transmission not done in "real-time"; and (3) data transmission occurring on a "store and forward" basis, where information is stored at a central location before being forwarded to a recipient. Resp't's Br. at 11. All three statements are correct; *Western Telepage* confirmed that a one-way paging system, where messages are routed through a central location and not delivered in real time, is taxable as "network telephone service." 140 Wash.2d at 602, 609-12, 998 P.2d 884

¶ 31 *Western Telepage,* however, primarily addressed whether one-way transmission falls within the statute. Neither party took the position that the pager service manipulated or transformed the data it was transmitting.

¶ 32 In contrast here, DOR acknowledges that Qualcomm engages in *some* processing of data, although it disputes the extent of the processing. [FN4] Specifically, DOR states that the tracking service "process[es] the raw position information coming from the trucks." Resp't's Br. at 3. Therefore, we must reach the issue whether the primary purpose of the service is data transmission or data processing.

> FN4. The amount of data manipulation that takes place at Qualcomm's network management center and the reasons for the manipulation were contested before the trial court.

In general, with a contract not subject to bifurcation,[FN5] the Department looks to the "primary activity" (Det. No. 92-183ER, 13 ***953** WTD 96 (1993)) or the "predominate nature" (Det. No. 91-163, 11 WTD 203 (1991)) of the activities to determine the B & O tax classification of the income. *See generally* Det. No. 98-012, 17 WTD 247 (1998). The test has also been characterized as a "true object" test.

> FN5. DOR claims that even were we to determine that the location position poll reporting is not a "network telephone service," the macro and freeform messages are such a service. This analytical approach would require bifurcating the track-

> ing service contract to address the messages and location services separately. Qualcomm correctly points out that the law disfavors bifurcation. Because we conclude that even the location service is taxable as a "network telephone service," we do not address the bifurcation issue in detail.

Wash. Dep't of Revenue, Determination No. 03-170, 24 Wash. Tax Dec. 393, 396 (2005). Thus, we turn to discussing the primary purpose or true object test as the basis of our analysis.

Primary Purpose/True Object Test

¶ 33 The determination of a contract's true objective focuses on what the purchaser seeks to obtain from the seller. Determination No. 03-170, 24 Wash. Tax Dec. at 396; *see also* Wash. Dep't of Revenue, Determination No. 89-009A, 12 Wash. Tax Dec. 1, 5 (1993). If we were to determine that the data transmission portion of the tracking service was "merely incidental to the information services" portion, Qualcomm should not be taxed for providing "network telephone service." Wash. Dep't of Revenue, Determination No. 98-202, 19 Wash. Tax Dec. 771, 776 (2000) (quoting Wash. Dep't of Revenue, Determination 90-128, 9 Wash. Tax Dec. 280-1 (1990)). The true object test may involve an examination of items such as the transaction contract, related billing, and advertising. Wash. Dep't of Revenue, Determination No. 90-128, at 5-6, 9 Wash. Tax Dec. 280-1 (1990); Wash. Dep't of Revenue, Determination No. 00-159E, 20 Wash. Tax Dec. 372, at 378-79 (2001).

¶ 34 Qualcomm relies heavily on a 2007 case from the Tennessee Court of Appeals. In *Qualcomm, Inc. v. Chumley,* No. M2006-01398-COA-R3-CV, 2007 WL 2827513, at *1 (Sept. 26, 2007), the Tennessee court determined that "telecommunications was not the true object or primary purpose of the" tracking service. The Tennessee *Qualcomm* court concluded:

> Having thoroughly analyzed the facts as they were agreed upon by the parties before the trial court, we conclude that the true object or primary purpose of Qualcomm's OmniTRACS service is to determine the location and load status of customer vehicles-that is, to collect data and then make it available to Qualcomm's customers. While the OmniTRACS system undoubtedly contains the ability to transmit "free form" text messages, acquiring this capability is not the principal aim of its purchasers. Nor does the system's capacity for sending "macro" messages transform it into a telecommunications service since these so-called "messages" do little more than allow information concerning a vehicle's status to be combined with information on its location. Even then, these "macro" messages must still be retrieved by the customer. As agreed below, the ability to ascertain a vehicle's location and load status is the primary reason that customers purchase OmniTRACS. The fact that a service might employ, involve, or be accessed by telecommunications, without more, will not transform it into a taxable telecommunications service. *See Prodigy* [*Servs. Corp. v. Johnson*], 125 S.W.3d [413,] 419 [Tenn. Ct.App.2003]; *see also Equifax* [*Check Servs., Inc. v. Johnson*], 2000 WL 827963, at *3 [Tenn.App.2000].

2007 WL 2827513, at *8 (citations omitted).

¶ 35 The Tennessee case is distinguishable on its facts. There, the parties agreed that the system's purpose was to "collect data and then make it available to Qualcomm's customers." 2007 WL 2827513 at *8. We agree with DOR that this admission in the Tennessee case "improperly conflates the functionality of the OmniTRACS system with the function of the OmniTRACS Mobile Communications service." Resp't's Br. at 29. Thus, the Tennessee case does not apply here.[FN6]

> FN6. Importantly, DOR notes that the Tennessee court appears to have a "more restrictive interpretation of the term 'telecommunications' than the Washington

> Supreme Court." Resp't's Br. at 29. The final portion of the Tennessee court's *Qualcomm* opinion stresses that the court considers "telecommunications" to resemble telephone calls and similar services with direct interface between two parties. 2007 WL 2827513 at *8. In contrast, *Western Telepage* demonstrates that our state defines "network telephone service" (now "telecommunications") more broadly and does not need to be a direct, real-time interface. 140 Wash.2d at 611-12, 998 P.2d 884.

***954** Primary Purpose-Truck Location System/ Automatic Position Polls

¶ 36 Returning to the question of the primary purpose here, we note that the tracking service provides a range of options, from the truck location and SensorTRACS systems, which least resemble a "means of person-to-person communication," *Qualcomm,* 2007 WL 2827513, at *8, to the freeform messages, which most resemble such communication. Consequently, if the basic truck location system qualifies as a "network telephone service," the true object of the tracking system as a whole will be taxable data transmission; Qualcomm's automatic position poll service forms the core of the Base Plan and, as stated, is not easily analogized to traditional telephone calls or other similar methods of communication.

¶ 37 Qualcomm accords great weight to the location data manipulation that takes place at its network management center. It asserts that "Qualcomm calculates the position of the truck using satellites and determines the condition of the truck by using data from sensors and the engine bus." Appellant's Reply Br. at 3. In support of its claim, Qualcomm cites two DOR determinations.

¶ 38 In the first DOR determination, an insurance claims processor that conveyed data between medical service providers and insurance carriers was not merely transmitting the data. This is because it also reformatted the information to facilitate the claims process and provided reports on the process for customers. Wash. Dep't of Revenue, Determination No. 05-0325, 27 Wash. Tax Dec. 99, 107 (2008).

¶ 39 In the second DOR determination, a travel agency leased a computer that gave it access to a database of hotel, airline, and rental car reservations. Determination No. 98-202, 19 Wash. Tax Determination at 773. The determination concluded that telephone line charges associated with the service were incidental to the data processing the reservation service rendered; "the furnishing of the telephone lines is not the object of the transaction, but merely incidental to the personal services being rendered." Determination No. 98-202, 19 Wash. Tax Dec. at 776 (quoting Wash. Dep't of Revenue No. 90-128).

¶ 40 DOR counters that "[n]othing in the record shows that the message data is converted or processed in any manner." Resp't's Br. at 22. It adds that any data processing performed at the network management center is done with the primary purpose of facilitating communication between the truck and the dispatch center. DOR also refers to various documents and advertising Qualcomm prepared for customers or prospective customers to support its argument that transmission, rather than data manipulation or processing, is the primary purpose of the tracking system. Notable among the advertising materials, according to Qualcomm, its OmniTRACS system is a "two-way, mobile satellite communications system," indicating its primary purpose or true objective of data transmission and not data manipulation. CP at 240. DOR's argument persuades us.

¶ 41 In both DOR determinations Qualcomm cites, the taxpayer performed a high degree of information processing in addition to data transmission. In the insurance case, for example, the taxpayer received information; reformatted it for use in insurance company electronic forms; requested additional information when needed to complete a claim

form; and rejected claims based on certain guidelines, such as incomplete information, missed guidelines, or when a claim was from a pharmacy or insurance company that was not involved in the processing network. Determination No. 05-325, 27 Wash. Tax Dec. at 100-102.

¶ 42 In the travel reservations determination, the taxpayer used a telephone line to access a reservation system. The system "allow[ed] it to receive current information on airline, hotel, and rental car availability and prices ... [and] the reservation system allow[ed] Taxpayer to actually book the reservation with the service provider." Determination No. 98-202, 19 Wash. Tax Dec. at 775. The primary purpose, then, was to "access the information in the System's reservation system and to make the reservation." Determination No. 98-202, 19 Wash. Tax Dec. at 776.

***955** ¶ 43 The insurance determination sets out that the key issue here is whether the taxpayer provides "the medium over which the data was communicated," as opposed to "new information to its customers." Determination No. 05-0325, 27 Wash. Tax Dec. at 107. Using this standard, Qualcomm's tracking system, including the basic automatic position polls, falls within the definition of a "network telephone system" because Qualcomm provides the medium over which the customer's data is communicated and Qualcomm does not provide "new information to its customers."

¶ 44 Qualcomm's network management center does process the satellite data received from the customer's truck's mobile communication terminal and sensors to make this data useful to the customer's computer system, but this processing role is insufficient to amount to Qualcomm's "information processing" as discussed above. DOR's reconsideration determination for this matter noted that "[d]ata conversion and protocol conversions occur in most, if not all, communication systems. These conversions, in and of themselves, do not mandate that the service be deemed an 'information service.' " CP at 15. The 2007 amendment of former RCW 82.04.065(8) supports this DOR determination:

> "Telecommunications service" includes such transmission, conveyance, or routing in *which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission,* conveyance, or routing....
>
> (Emphasis added.)

¶ 45 Here, the record shows that the tracking service provides a communications link between the truck and its mobile communication terminal, owned by the customer, and the dispatch center's computers and tracking software, also owned by the customer. All of the data sent from the customer's truck to Qualcomm's network management center and retrieved by a customer's dispatch center is created by the customer's shipping activity, not by Qualcomm. The record simply does not suggest that Qualcomm manipulates the data in any relevant way.

¶ 46 Qualcomm's network management center converts raw data sent from the customer's truck/mobile communication terminal via satellites into a format that is usable by the customer's tracking software in the customer's dispatch center without providing significant new information to the customer's dispatch center. Determination No. 05-0325, 27 Wash. Tax Dec. at 107; *see also* former RCW 82.04.065(8) (recognizing that telecommunications, formerly network telephone service, includes some degree of computer processing to convey information). The circumstance here differs from the DOR insurance determination, for example, in which the taxpayer not only transmitted coverage information, but also followed up on missing information, checked for appropriate insurance coverage, and rejected certain claims, in addition to transmitting and reformatting collected data. Determination No. 05-0325, 27 Wash. Tax Dec. at 101-02.

¶ 47 Here, in contrast, the position poll reports and not the data manipulation required to create the re-

ports, however obtained, motivate the customer to subscribe to the service. Our conclusion is supported by the fact that customers using the GPS method to locate trucks, instead of the proprietary Qualcomm satellite tracking method, pay the same amount for the tracking service as other customers, despite their position polls not needing the same level of data manipulation.

¶ 48 Finally, the reference to data manipulation in *Community Telecable* supports the trial court's order granting summary judgment to DOR. Because the position-tracking portion of the service qualifies as "network telephone service," the remaining services Qualcomm provides-services that both parties understand resemble more traditional methods of communication-to facilitate further information transmission between the truck driver and the customer's dispatch center also fall within the definition of "network telephone services." The trial court properly granted summary judgment.

¶ 49 Affirmed.

We concur: HUNT, J., and QUINN-BRINTNALL, J.
Wash.App. Div. 2,2009.
Qualcomm, Inc. v. State, Dept. of Revenue
213 P.3d 948

END OF DOCUMENT

APPENDIX B

Amnesty
SSTP Home
About the Project
Governing Board States
Meetings & Materials
Press Releases
Issue Papers
Library
St. Legislative Status
Collection Cost Study
Certificates of Compliance
Certified Service Provider
SST Technology
SSUTA Agreement
Bylaws and Rules

About the Project

White Paper on Stream Lined Sales Tax Project

The Streamlined Sales Tax Governing Board

The effort that became the Streamlined Sales Tax Governing Board began in March 2000. The goal of this effort is to find solutions for the complexity in state sales tax systems that resulted in the U.S. Supreme Court holding (*Bellas Hess v. Illionis and Quill Corp. v. North Dakota*) that a state may not require a seller that does not have a physical presence in the state to collect tax on sales into the state. The Court ruled that the existing system was too complicated to impose on a business that did not have a physical presence in the state. The Court said Congress has the authority to allow states to require remote sellers to collect tax.

The result of this work is the Streamlined Sales and Use Tax Agreement. The purpose of the Agreement is to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance. The Agreement focuses on improving sales and use tax administration systems for all sellers and for all types of commerce through all of the following:

1. State level administration of sales and use tax collections.
2. Uniformity in the state and local tax bases.
3. Uniformity of major tax base definitions.
4. Central, electronic registration system for all member states.
5. Simplification of state and local tax rates.
6. Uniform sourcing rules for all taxable transactions.
7. Simplified administration of exemptions.
8. Simplified tax returns.
9. Simplification of tax remittances.
10. Protection of consumer privacy.

Today twenty-two states have adopted the simplification

measures in the Agreement (representing over 31 percent of the population) and more states are moving to adopt the simplification measure.

For more information:

Scott Peterson, Executive Director
615-460-9332
Scott.Peterson@sstgb.org

APPENDIX C

A draft of the Bundled Transaction issue paper was presented to the Governing Board on August 30, 2006. The Governing Board directed SLAC to prepare an interpretative rule and unresolved issues would be decided at the time the interpretative rule was presented to the Governing Board for approval. The Governing Board approved Rules 330.1 and 330.2 on December 14, 2006. The bundled transaction issue paper has been edited to be consistent with the interpretative rules adopted by the Governing Board.

State and Local Advisory Council
Issue Paper

Bundled Transaction

Background of Definition of Bundled Transaction

The Streamlined Sales Tax Project formed a work group in August 2001 to address the lack of uniformity among states in determining if a transaction is bundled in light of the market trends toward the bundling of products, especially in the telecommunications industry and as a result of these trends, retailers' and certified service providers' need for guidance when determining the taxability of sales of bundled products. The work group was charged with: 1) developing a uniform definition for a bundled transaction; 2) insuring the uniform definition for a bundled transaction would be consistent with the uniform definition for "sales price;" 3) identifying issues related to the application of a uniform definition considering the inconsistent treatment in many states when applying a "true object" test, de minimis test, "primary object" test or "essence of the transaction" test as a result of administrative decisions and state court decisions; 4) making recommendations regarding whether unbundling should be allowed and, if so, how allocations of the sales price should be determined; and 5) making recommendations whether separate bundling provisions should be developed for telecommunications. Issues specific to maintenance contracts will be addressed further by the State and Local Advisory Council.

Since participating states did not have similar terms and definitions for a bundled transaction, as was the case in other administrative definitions, a survey was conducted to identify common elements among the states. While the survey was taken at the beginning of this effort and states' laws may have changed the survey, a summary of responses to the survey are attached to this white paper in Appendix B for informational purposes. The group considered both a broad definition of a "bundled transaction" with many provisions or requirements for member states regarding the use of the definition and the treatment of bundled transactions versus a narrow definition with minimal provisions or requirements for member states for the use of the definition and requirements for the treatment of only certain types of bundled transactions. The group chose the latter. This paper was prepared at the request of the Implementing States and the Governing Board to explain and clarify provisions of the definition of a bundled transaction included in the Library of Definitions, Appendix C, Part I of Administrative Definitions, and the member states' requirements with regard to the adoption and use of the definition, as set out in Section 330 of the Streamlined Sales and Use Tax Agreement, as amended April 16, 2005. August 30, 2006 the Governing Board directed SLAC to prepare an interpretative rule based on the issue paper except that unresolved issues would be decided when the rule was presented for approval. The Governing Board approved Rules 330.1 and 330.2 on December 14, 2006.

Definition of a Bundled Transaction

The definition of "bundled transaction" is included in Part I Administrative Definitions. It defines uniform criteria for determining when a bundled transaction exists in much the same manner as the definition of "sales price" defines uniform criteria for determining the tax base that is either subject to tax or exempt from tax on the sale of a product. Member states are required to utilize the definition of "bundled transaction" in its entirety; none of its parts are severable when making a determination as to whether a transaction is a bundled transaction. That is, all parts of the definition are to be used to determine whether a transaction is a bundled transaction; however, a single part may disqualify a transaction as a bundled transaction. Member states must utilize the uniform definition in the member state's sales and use tax laws in accordance with the provisions of Sections 327 and 330 of the Streamlined Sales and Use Tax Agreement and in the same manner as required by other core definitions that are used for imposition and administration by January 1, 2008.

The language contained in the boxes below is language from the Streamlined Sales and Use Tax Agreement.

A bundled transaction is the retail sale of two or more products, except real property and services to real property, where (1) the products are otherwise distinct and identifiable, and (2) the products are sold for one non-itemized price.

There are two basic elements of a bundled transaction: products and price. This paper includes discussion of each element and provides examples for clarity.

Products
For the first of the two basic elements, there must be a retail sale of two or more products that are distinct and separately identifiable products.

- Only for purposes of the bundled transaction definition, "products" include all types of products except real property and services to real property. Types of products for purposes of the bundled transaction include tangible personal property, services, intangibles, digital goods, and products in which a member state has directly imposed tax on the retail sale thereof, but the imposition of tax on the retail sale of such products may not itself be considered tangible personal property, services, or digital goods according to applicable state law.

- Real property and services to real property are excluded from the definition of a bundled transaction. Services to real property include, for purposes of example only, such services as building framing, roofing, plumbing, electrical, painting, janitorial, pest control and window cleaning. Member states may continue current sales and use tax treatment for transactions including real property or services to real property and the provisions of this definition and Section 330 do not apply to such transactions.

(A) "Distinct and identifiable products" does not include:
(1) Packaging – such as containers, boxes, sacks, bags, and bottles – or other materials – such as wrapping, labels, tags, and instruction guides – that accompany the "retail sale" of the products and are incidental or immaterial to the "retail sale" thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes.

(2) A product provided free of charge with the required purchase of another product. A product is "provided free of charge" if the "sales price" of the product purchased does not vary depending on the inclusion of the product "provided free of charge."
(3) Items included in the member state's definition of "sales price," pursuant to Appendix C of the Agreement.

- Packaging is not a separate and distinct product when such packaging is the wrapping or packing that accompanies the retail sale of a product(s) and such packaging is incidental or immaterial to the retail sale of the product(s). Member states are not prohibited from exempting from tax the purchase or use of packaging or subjecting to tax the purchase of packaging that will accompany retail sales of products by limiting the seller's authority to utilize a resale exemption.

- A product provided free of charge is not a separate and distinct product. A product is considered to be provided free of charge in a retail sale when in order to obtain the product the purchaser is required to make a purchase of one or more other products and the price of the purchased products does not change based on the seller providing a product free of charge. Such products provided free of charge with the necessary purchase of another product are considered promotional products. Member states are not prohibited from exempting from tax the purchase by a seller of products that will be provided free of charge to a purchaser of another product or subjecting to tax the purchase of products that will be provided free of charge to a purchaser of another product by limiting the seller's authority to utilize a resale exemption. Member states may have different tax treatments for different types of promotional products. For purposes of example only:

  - A gas station providing a free car wash with the purchase of 15 or more gallons of gas.
  - A grocery store providing a free place-setting of dinnerware with the purchase of $30 of groceries.
  - An auto parts store providing a free cap with the purchase of a case of motor oil.

- A retail sale may not be considered to be for "two or more distinct and identifiable products" if the items are included in the member states' definitions of "sales price" and "purchase price." A member state may not treat a retail sale as including multiple products when the products or items are considered to be a part of the sale of a product in accordance with the definition of sales price as adopted by the member state.

  For example, a member state adopts a definition of "sales price" that includes "delivery charges" whether separately itemized or not. In such a state, the retail sale of a product and delivery of that product for a single price is not considered a bundled transaction because delivery charges are included in the sales price of the product as adopted by the member state.

- Items that are currently a part of the definitions of "sales price" and "purchase price" are:

  - Costs of property sold
  - Costs of materials used, labor or service costs, interest, losses, costs of transportation to the seller, taxes imposed on the seller, and expenses of the seller

- ❖ Charges for services necessary to complete the sale of a product (unless a member state has excluded from the sale price of a product even if separately itemized on an invoice given to the purchaser)
- ❖ Delivery charges (unless a member state has excluded from the sales price of a product even if separately itemized on an invoice given to the purchaser)
- ❖ Installation charges (unless a member state has excluded from the sales price of a product even if separately itemized on an invoice given to the purchaser)
- ❖ Credit for any trade-in as determined by state law (unless a member state has excluded from the sales price of a product if separately itemized on an invoice given to the purchaser)

➢ On April 16, 2005, the definition of "sales price" was amended in the Agreement to delete the following language: "The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise." Member states must comply with this change to the definition of sales price by January 1, 2008.

Price

The second basic element of a bundled transaction is that the sales price of the bundled distinct and identifiable products must be for one price that is not itemized. If a retail sale of two or more products is not made for "one non-itemized price," then the retail sale is not a "bundled transaction."

A "bundled transaction" does not include the sale of any products in which the "sales price" varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

➢ That is, a bundled transaction does not exist when the sales price varies, whether by negotiation or otherwise, with the selection of the distinct and identifiable products by the purchaser. A purchaser having the option of declining to purchase any of the products where the sales price will vary as a result of the selection of products or a different price is negotiated as a result of selections of products made by the purchaser evidences that the retail sale was not made for "one non-itemized price."

- ❖ For example, an information technology company enters into a multi-year contract with its purchaser to provide information technology services (data processing, help desk, software installation, and Web hosting) from the provider's data processing facility. Through negotiation, the provider and the purchaser agree on the services to be provided and the price. The price is a function of the mix of services to be provided. The provider bills one non-itemized price on its invoice to the purchaser. Because the price of products being sold varied or was negotiated as a result of the selection by the purchaser of the products included in the transaction, no "bundled transaction" exists.

(B) The term "one non-itemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

"One non-itemized price" is defined to exclude a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the purchaser in paper or electronic form, including (in part) an invoice, bill of sale, contract, periodic notice of rates and services, or a rate card.

- The sales-related documents made available to a purchaser must provide enough information to a purchaser so that the purchaser is able to determine the price(s) of taxable and exempt products.

    - If a seller bills or invoices one price for distinct and separate products that is equal to the total of the individually priced or itemized products contained in supporting sales-related documentation such as a catalog, price list, or service agreement, the transaction would not be considered a bundled transaction simply because the invoice contained one price.

    - If a transaction includes a bundle of products and one or more additional product(s) and the additional product(s) were individually priced or itemized from the bundled products in a catalog or price list but the invoice included one price, the additional products that were individually priced to the purchaser in the catalog or price list are not part of the bundled products sold for one non-itemized price.

      For example, company Z sells a bundle marketed as "Plan A" which includes the following products; 1,000 minutes of all-distance wireless service, ancillary service, Internet access, and video programming service for one non-separately-stated monthly price of $100. Company Z also provides purchasers of "Plan A" an option to purchase a specific wireless device for an additional, one-time only, separately-itemized and discounted price. Obtaining a discounted price for the wireless device is conditioned upon the purchaser subscribing to "Plan A" for a specific period of time and the discounted price increases if the purchaser selects a more expensive wireless device. Because the device is separately priced from the $100 for the bundled transaction that is "Plan A" services and that price is itemized on sales-related documentation, the wireless device is not part of the bundled transaction. This is an example of how an individually priced product will not become a part of a bundle of products. This example has no inference as to the tax treatment of a product that is sold below cost.

    - If a transaction does not qualify as a bundled transaction because the multiple products were itemized on sales-related documentation, or the invoice contained one price but the products were itemized on other supporting sales-related document and such transaction is further discounted, failing to itemize the amount of the discount for each product will not cause the transaction to now be characterized as a bundled transaction. Unless sales-related documentation or information is provided showing the allocation of the discount, the discounts should be considered allocated pro rata among the otherwise separately itemized products.

- Invoicing, service agreements, contracts or other sales documents that are given to the purchaser as well as catalogs, price lists, and rate cards made available to the purchaser when pricing the products are all documentation or evidence that must be maintained by the seller to show whether the retail sale was for one or more distinct and identifiable product(s) and whether the product(s) was sold for one non-itemized price.

A member state is not restricted in assessing tax because the seller or purchaser failed to provide documentary proof that the price varied based on selections of products by the purchaser.

- The following are examples of when a retail sale is **not** sold for "one non-itemized price."

  - A cable television service provider offers subscribers for $100 a month audio-video programming services, Internet access, a digital converter and a remote control device. Subscribers' monthly billing contains the following single line item description and price "Digital Cable & Internet Access (includes charge for digital converter and remote control) $100." Rate cards are mailed annually to subscribers and made available via the service provider's Web site that individually price or itemize the portion of the single $100 price attributable to the digital cable service, Internet access, digital converter and remote control device. Because the products and their itemized prices are itemized on sales-related documentation (the rate card) the transaction is not considered a bundled transaction.

  - Assume the same facts as in the previous example, except the subscriber receives a promotion which discounts the package price by 20% to $80 and the amount of the discount is not itemized for each product in other sales-related documents. The subscriber's monthly billing contains the following line item descriptions and prices: 1)"Digital Cable & Internet Access (includes charge for digital converter and remote control) $100" and 2) "Less: Special 20% promotion discount -$20." Because the transaction was not a bundled transaction prior to application of the 20% discount, applying the discount does not create a bundled transaction.

(C) A transaction that otherwise meets the definition of a "bundled transaction" as defined above, is not a "bundled transaction" if it is:

The provisions of Part C of the definition are exclusions that limit or narrow what transactions would be considered a bundled transaction. Part C provisions create a level of uniformity in the member states by incorporating in the definition elements for (1) a subjective true object test for transactions that are for tangible personal property and services or transactions that are for multiple services; (2) an objective, quantitative de minimis test for transactions including all types of products; and (3) a quantitative primary test for which the application is limited to transactions that contain multiple products that are only tangible personal property and at least one of the products listed in Section (C)(4).

- To determine whether a transaction is a bundled transaction, the provisions of Part C must be utilized prior to applying the provisions of Section 330 of the Streamlined Sales and Use Tax Agreement or a member state's tax statutes for bundled transactions.

(1) The "retail sale" of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or

(2) The "retail sale" of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or

From the survey taken in 2001, at the beginning of this effort, 16 of 29 states indicated they did not apply a subjective test to determine the true object of a transaction that includes only tangible personal property; therefore, the provisions of C(1) and (2) do not apply to transactions that include only tangible personal property. A summary of the survey results is attached in Appendix A.

- Sellers of a bundled transaction that includes tangible personal property and a service or multiple services may use the subjective test in (C)(1) and (C)(2) or use the quantitative de minimis test in (C)(3) which can be applied to transactions that include all types of products.

- When a transaction does not meet the definition of a bundled transaction because it meets (C)(1) or (C)(2), the transaction will be considered a retail sale of a service that is the object of the transaction. The true object of such a transaction would be the service. "True object" in (C)(1) and (C)(2) is the main product or item in the transaction.

- Because Section (C)(1) and (C)(2) are subjective, the application of (C)(1) and (C)(2) are fact-based and should be applied on a case-by-case basis. For purposes of example, factors that might be considered include: what the seller is in the business of doing; whether the tangible good or service that is essential to a service is available for sale without the service or available exclusively in connection with providing the service; how the tangible good or service is essential to the use of a service; and what the purchaser's object of the transaction is.

    - For example an electronics retail store sells a plasma television and one-year subscription to an audio-video programming service for a single non-itemized price of $5,000. The audio-video programming service is not a product provided free of charge. While a television is essential to receiving the audio-video programming service, that specific television is not required and the purchaser could pay a much lesser price for a television of lesser value and the same audio-video programming service. The plasma television is the main item or object of the transaction based on the facts of the transactions. Section (C)(1) does not apply since the true object is not the service. Assuming the taxable products are more than 10% of the sales price or purchase price, the transaction is a bundled transaction. In this example, the bundled transaction includes audio-video programming and provisions of Section 330(C) of the Agreement would apply.

- Member states are not prohibited from imposing tax or exempting from tax a seller's purchase of a tangible good or service that is essential to the use of a service that is the object of the transaction, and is provided exclusively in connection with such service, or subjecting such tangible good or service to tax by limiting the seller's authority to utilize a resale exemption.

- Member states may not limit the application of the true object test under (C)(1) and (C)(2) by placing a cap on the price of transactions to which the test would apply.

- Member states are prohibited from using thresholds for purposes of taxing a portion of the sales price of a transaction in which the taxable products are determined to not be the object of the transaction.

- Member states are prohibited from taxing the total sales price or total purchase of a transaction that includes both taxable products and non-taxable products and the taxable products are determined to not be the true object of the transaction.

- Member states are prohibited from requiring sellers to separately price or itemize on a purchaser's invoice the taxable products that are not the true object from the non-taxable products included in the transaction for purposes of subjecting the sales price of the taxable products to tax.

(3) A transaction that includes taxable products and nontaxable products and the "purchase price" or "sales price" of the taxable products is de minimis.
   (a) De minimis means the seller's "purchase price" or "sales price" of the taxable products is ten percent (10%) or less of the total "purchase price" or "sales price" of the bundled products.
   (b) Sellers shall use either the "purchase price" or the "sales price" of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the "purchase price" and "sales price" of the products to determine if the taxable products are de minimis.
   (c) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

When reviewing the survey, many states used a de minimis test. Some of the states utilized a de minimis test for all types of bundled products while others applied the test to limited types of bundled products such as food bundled with other types of tangible personal property as in the case of gift baskets. For purposes of determining whether a bundled transaction exists, Section (C)(3) can be applied to bundles that include all types of products.

- A seller may use the purchase price or sales price of each of the products in the transaction to measure or quantify whether the taxable products are de minimis. A seller may not use the sales price for some of the products and purchase prices for other products to measure or quantify whether the taxable product(s) in the transaction is de minimis.

- When the taxable products are determined to be de minimis, the transaction is not defined as a bundled transaction.

- Member states may not limit the application of the de minimis test by placing a cap on the price of transactions to which the test would apply.

- Member states are prohibited from using thresholds for purposes of taxing a portion of the sales price of a transaction in which the taxable products are determined to be de minimis.

- Member states are prohibited from taxing the total sales price or total purchase of a transaction that includes both taxable products and non-taxable products and the tax products in the transaction are de minimis.

- Member states are prohibited from requiring sellers to separately price or itemize on a purchaser's invoice the taxable products that are otherwise de minimis from the non-taxable products included in the transaction for purposes of subjecting the sales price of the taxable products to tax.

- Where services have been sold via a service contract, the full contract price for the services will be used to determine whether the taxable products are de minimis regardless of the period of time covered by the service agreement. The price of the service may not be prorated based on the term of the service contract to determine de minimis.

(4) The "retail sale" of exempt tangible personal property and taxable tangible personal property where:
   (a) the transaction includes "food and food Ingredients", "drugs", "durable medical equipment", "mobility enhancing equipment", "over-the-counter drugs", "prosthetic devices" (all as defined in Appendix C) or medical supplies; and
   (b) where the seller's "purchase price" or "sales price" of the taxable tangible personal property is fifty percent (50%) or less of the total "purchase price" or "sales price" of the bundled tangible personal property. Sellers may not use a combination of the "purchase price" and "sales price" of the tangible personal property when making the fifty percent (50%) determination for a transaction.

- The primary test in Section (C)(4) applies only to transactions that contain multiple products that are only tangible personal property and at least one product is: food and food ingredients including soft drinks, candy, and dietary supplements; drugs including over-the-counter and grooming and hygiene products; durable medical equipment; mobility enhancing equipment; prosthetic devices, all of which are defined in the Agreement; and medical supplies. The term "medical supplies" is not a defined term under the Agreement. Member states may define "medical supplies" according to its state laws for purposes of applying the primary test in Section (C)(4).

- If the transaction contains products that are not tangible personal property or the products are tangible personal property but none of the products are food and food ingredients including soft drinks, candy, and dietary supplements; drugs including over-the-counter and grooming and hygiene products; durable medical equipment; mobility enhancing equipment; prosthetic devices, all of which are defined in the Agreement; and medical supplies, the primary test in Section (C)(4) does not apply and the de minimis test in Section (C)(3) can be used to determine whether the transaction is a bundled transaction.

- A seller may use the sales price or purchase price of each of the products in the transaction to measure or quantify whether the taxable products are the primary products (more than 50% of the total sales price or purchase price) in the transaction. A seller may not use the sales price for some of the products in the transaction and purchase price for other products in the transaction, to measure or quantify whether the taxable products in a transaction are the primary products.

- When the taxable products are not determined to be the primary products (more than 50%) in a retail sale pursuant to Section (C)(4) of the definition, the transaction is not defined as a bundled transaction.

- Member states may not limit the application of the primary products (more than 50%) test under Section (C)(4) of the definition by placing a cap on the price of the transactions to which the test would apply.

- Member states are prohibited from using thresholds for purposes of taxing a portion of the sales price in which the exempt products are determined to be the primary products (more than 50%) of the transaction.

- Member states are prohibited from taxing the total sales price or total purchase of a transaction that includes only tangible personal property and at least one of the products is a product specified in Section (C)(4)(a) of the definition and the taxable products are not the primary products (more than 50%) of the transaction.

- Member states are prohibited from requiring sellers to separately price or itemize on a purchaser's invoice the taxable products that are not the primary products (more than 50%) of the transaction under Section (C)(4) of the definition for purposes of subjecting the otherwise taxable products to tax.

    - The following illustrates the application of the primary test in Section (C)(4):

IV Start Kit Product	**State Product Taxability**	**Purchase Price**
Medicated dressing	non-taxable	$ 2.25
Gauze sponge	taxable	1.35
Glove	taxable	1.75
Medicated pad	non-taxable	1.90
Sterile sponge	non-taxable	1.65
Alcohol prep swabs	non-taxable	1.60
Sterile tape	non-taxable	1.80
Latex tourniquet	taxable	1.40
Total Purchase Price		$13.70
Non-taxable		$ 9.20
Taxable		$ 4.50
Non-taxable %		67.15%
Taxable %		32.85%

Since the percentage for the taxable products is less than 50%, under Section (C)(4), the transaction is not a bundled transaction.

Section 330: BUNDLED TRANSACTIONS (Effective on and after January 1, 2008)

A. A member state shall adopt and utilize to determine tax treatment, the core definition for a "bundled transaction" in Appendix C, Part I of the Library of Definitions in the Agreement.

B. Member states are not restricted in their tax treatment of bundled transactions except as otherwise provided in the Agreement. Member states are not restricted in their ability to treat some bundled transactions differently from other bundled transactions.

C. In the case of a bundled transaction that includes any of the following: telecommunication service, ancillary service, internet access, or audio or video programming service:

1. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.
2. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.
3. The provisions of this section shall apply unless otherwise provided by federal law.

Since most states laws did not use the term or define a bundled transaction, Section 330 of the Agreement was added to make it clear member states must adopt the definition of a bundled transaction in substantially the same form as provided in the Agreement and enact state laws specifying the taxability for a bundled transaction as defined under the Agreement. Member states must adopt and utilize the term and definition by January 1, 2008.

- Member states may enact different provisions that would treat the taxation of some bundled transactions in one manner while treating the taxation of other bundled transactions differently. Member states may enact laws that provide for different tax treatment of bundled transactions based on the distinct and separately identifiable products included in a bundled transaction.

- Member states are prohibited from enacting provisions for the treatment of a bundled transaction that are not in compliance with other requirements in the Agreement such as imposing different tax rates or having caps or thresholds that would apply to bundled transactions.

- Member states are required to adopt provisions of Section 330(C) of the Agreement that applies to a bundled transaction including all types of products except real property and services to real property and at least one product is a telecommunication service, ancillary service, Internet access, or audio or video programming service.

- Member states are not prohibited from imposing tax on the non-itemized price of a bundled transaction unless, the bundled transaction includes the distinct and separately identifiable products specified in Section 330(C) and the seller has maintained books and records identifying through reasonable and verifiable standards that portion of price attributable to the distinct products.

- Acceptable books and records used for purposes of subjecting to tax the taxable portion of the non-itemized price of a bundled transaction pursuant to Section 330(C) shall be maintained in the regular course of business and not created and maintained for tax purposes. Books and records will be considered to be maintained for tax purposes when such books and records identify taxable and nontaxable portions of the price while other books and records are maintained that identify different prices attributable to the distinct products included in same bundled transaction. For purposes of example only, books and records kept in the regular course of business that are acceptable include financial statements, general ledgers, invoicing and billing systems and reports, and tariffs and other regulatory reports.

    - For example: Company X sells a package of services that includes audio/video programming service, Internet access and telecommunication service for a monthly fee of $50. While company X records the sales of the bundled services into a single general ledger revenue account, the company maintains a billing system that identifies the portion of the price attributable to each of the distinct products ($15 for audio/video programming service, $10 for Internet access, and $25 for telecommunication service). The billing system records the $50 sale in the general ledger. Sales tax is applied to the portion of the price attributable to the taxable products using tax-calculation logic within the billing system software and consistent with the Company's marketing and pricing policies. Even though the sales are recorded in a single general ledger account, the billing system detail serves as acceptable books and records because the billing system is maintained in Company X's regular course of business and does not primarily serve a tax purpose.